

PT 98-56

Tax Type: **PROPERTY TAX**

Issue: **Charitable Ownership/Use**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

**GOOD NEWS  
PARTNERS,  
APPLICANT**

**v.**

**ILLINOIS DEPARTMENT  
OF REVENUE**

**No. 95-16-0844**

**Real Estate Tax Exemption for  
1995 Assessment Year**

**P.I.N: 11-30-213-034**

**Cook County Parcel**

**Alan I. Marcus,  
Administrative Law Judge**

**RECOMMENDATION FOR DISPOSITION**

**SYNOPSIS:** This proceeding raises a very limited issue, that being whether that portion of real estate identified by Cook County Parcel Index Number 11-30-213-034 not found to be exempt in the Department's determination dated January 31, 1997<sup>1</sup> was "actually and exclusively used for charitable or beneficent purposes ..." within the meaning of 35 ILCS 200/15-65<sup>2</sup> during the 1995 assessment year.

1. The property itself shall hereinafter be referred to as the "subject property" or the "subject parcel." That portion of the subject property currently at issue (i.e. that *not* exempted in the Department's determination) shall hereinafter be referred to as the "portion in dispute."

2. In People ex rel. Bracher v. Salvation Army, 305 Ill. 545 (1922), the Illinois Supreme Court held that the issue of property tax exemption necessarily depends on the statutory provisions in force during the time for which the exemption is claimed. This applicant seeks

The controversy arises as follows:

On April 18, 1996, Good News Partners (hereinafter the "applicant") filed a Real Estate Exemption Complaint with the Cook County Board of (Tax) Appeals (hereinafter the "Board"). (Dept. Group. Ex. No. 1, Doc. A). The Board reviewed the complaint and subsequently recommended to the Illinois Department of Revenue (hereinafter the "Department") that the requested exemption be granted . (Dept. Group Ex. No. 1, Doc. B).

The Department partially rejected this recommendation by issuing a determination dated January 30, 1997. Said determination found that:

ONE THIRD OF THE [BUILDING] IS EXEMPT, TWO THIRDS  
IS TAXABLE. (PROPERTY NOT IN EXEMPT USE).

Dept. Group Ex. No. 2.

Applicant filed a timely request for hearing as to this partial denial on February 11, 1997 (Dept. Ex. No. 3) and later presented evidence at a formal evidentiary hearing. Following submission of all evidence and a careful review of the record, it is recommended that the portion in dispute not be exempt from 1995 real estate taxes.

**FINDINGS OF FACT:**

1. The Department's jurisdiction over this matter and its position therein, namely that the portion in dispute was not in exempt use throughout the 1995 assessment year, are established by the admission into evidence of Dept. Group Ex. No. 1 and Dept. Ex. No. 2.
2. Applicant was incorporated under the General Not-For-Profit Corporation Act of Illinois in July, 1980. Its corporate purposes are, *inter alia*, to: (1) advance the

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exemption from 1995 real estate taxes. Therefore, the applicable provisions are those found in the Property Tax Code, 35 ILCS 200/1 *et seq.*

realm of G-D in Jesus Christ by converting profane space into sacred space; (2) recreate the shape of neighborhood housing in whatever ways will relieve the poor, distressed and underprivileged, will lessen the burdens of government and will promote social welfare; (3) acquire, own, develop, construct, maintain, manage, improve and operate adequate and secure housing for low and moderate income people; (4) provide religious, social, recreational, community and commercial services to or for the benefit of area residents; and (5) finance or secure financing for housing projects for low and moderate income people. Applicant Ex. No. 2.

3. The Internal Revenue Service issued applicant an exemption from federal income tax on March 4, 1980. The Service issued this exemption pursuant to Section 501(a) of the Internal Revenue Code, based on its conclusion that applicant qualified as an organization described in Section 501(c)(3) thereof. Applicant Ex. No. 4-A.
4. The Department issued applicant an exemption from Use and related sales taxes on September 20, 1991. The Department based this exemption on its conclusion that applicant "is organized and operated exclusively for charitable purposes." Applicant Ex. No. 4-B.
5. Applicant acquired ownership of the subject property, which is located at 7628-30 N. Paulina, Chicago, IL 60626, via a warranty deed dated October 19, 1993. Dept. Group Ex. No. 1, Docs. A, B; Applicant Ex. No. 1; Tr. p. 13.

6. The subject property is improved with a 1-story building that occupies 3,584 square feet. This building was in extreme disrepair, (i.e. had broken windows, large holes in the walls, ceiling and roof, etc.) when applicant acquired it. Dept. Group Ex. No. 1, Doc. A, B; Applicant Ex. Nos. 6-A, 6-B, 6-C; Tr. pp. 13-14.
7. Applicant began rehabbing the building by replacing joists and trusses on the roof in February of 1994. It then began other roof repairs, including placing a new rubber roof on the entire building, in June of 1994. Tr. p. 16.
8. Applicant began repairing the interior flooring in the spring of 1994. By the end of that year, it completed other repairs that ensured the building's structural integrity. Tr. p. 18.
9. Applicant began working on interior repairs in early 1995. These repairs included installing dry wall as well putting in new electrical and plumbing systems. Tr. p. 19.
10. Applicant continued with these and other interior repairs throughout 1995. It finished repairing the site of its thrift store, which occupies approximately 1,193 square feet<sup>3</sup> or 1/3 of the total building space, before proceeding with other repairs. Applicant Ex. No 9; Tr. pp. 19-20, 25.
11. Applicant began operating a thrift store in this portion of the building in the spring of 1995. This portion of the building is not at issue herein because the Department's determination dated January 30, 1997 found it to be exempt from 1995 real estate taxes. Dept. Ex. No. 2; Tr. p. 15.

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3.  $3,584 \text{ square feet} \times .333 = 1,193.472$  or a rounded figure of 1,193 square feet.

12. Applicant designated the remaining 2/3 of building space (which *is* currently in dispute and occupies 2,391 square feet)<sup>4</sup> for use as a day care center that would service the needs of neighborhood children. Tr. pp. 15, 26.
13. Applicant continued making interior repairs, that included re-tiling of the floor, installing a new hot water heater, hanging dry wall and replacing some doors, to the portion in dispute throughout 1995. It did not, however, actually open the day care center during that time. Tr. pp. 26-27.
14. Applicant did not open the day care facility because it was unable to obtain appropriate licensure from the State of Illinois. It could not acquire such licensure because it was unable to hire a director for its facility. Tr. pp. 26-28.
15. Applicant had not hired a director as of the hearing date, May 18, 1998. It also remained unable to procure appropriate licensure as of that date. *Id.*

### **CONCLUSIONS OF LAW:**

An examination of the record establishes that this applicant has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the portion in dispute from 1995 real estate taxes. Accordingly, under the reasoning given below, the determination by the Department that the portion in dispute was not in exempt use throughout the tax year in question, as required by 35 ILCS 200/15-65, should be affirmed. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural

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4.  $3,584 \text{ square feet} \times .666 = 2,390.528$  or a rounded figure of 2,391 square feet.

societies, and for school, religious, cemetery and charitable purposes.

The power of the General Assembly granted by the Illinois Constitution operates as a limit on the power of the General Assembly to exempt property from taxation. The General Assembly may not broaden or enlarge the tax exemptions permitted by the Constitution or grant exemptions other than those authorized by the Constitution. Board of Certified Safety Professionals, Inc. v. Johnson, 112 Ill.2d 542 (1986). Furthermore, Article IX, Section 6 is not a self-executing provision. Rather, it merely grants authority to the General Assembly to confer tax exemptions within the limitations imposed by the Constitution. Locust Grove Cemetery Ass'n. of Philo, Illinois v. Rose, 16 Ill.2d 132 (1959). Moreover, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App.3d 497 (1st Dist. 1983).

Pursuant to its Constitutional mandate, the General Assembly enacted the Property Tax Code 35 **ILCS** 200/1-3 *et seq.* The provisions of that statute which govern disposition of the instant proceeding are found in Section 200/15-65, the relevant part of which provides that:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(a) institutions of public charity

Our courts have long refused to grant exemptions under Section 200/15-65 and its predecessor provisions absent appropriate evidence that: (1) the subject property is owned by an "institution of public charity" and (2) the property is actually and exclusively used for charitable or beneficent purposes. Methodist Old People's Home v. Korzen, 39 Ill.2d 149 (1968) (hereinafter "Korzen").

The deed (Applicant Ex. No. 1) establishes that this applicant owned the subject property throughout the 1995 assessment year. Furthermore, the Department's determination dated January 30, 1997 (Dept. Ex. No. 2) implicitly establishes that this applicant qualifies as an "institution of public charity" under Section 200/15-65 because the partial denial set forth therein was based *solely* on lack of exempt use.

Applicant has not challenged the above findings. Nor has it challenged that part of the determination which found that only 1/3 of the building was in exempt use during the 1995 assessment year. Consequently, I shall leave the findings with respect to applicant's ownership of the subject property, its partial exempt use thereof and its qualification as an "institution of public charity" undisturbed. Therefore, any remaining analysis shall address a very narrow inquiry, that being whether the portion in dispute was actually used for exempt purposes during the 1995 assessment year.

The following considerations lead me to answer this inquiry in the negative. First, the rules of statutory construction and interpretation which our courts apply in all property tax exemption cases require that: (1) a statute exempting property or an entity from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation (People ex rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968), Gas Research Inst. v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987)); (2) the party seeking exemption bears the burden of proof (Metropolitan Sanitary Dist. of Greater Chicago v. Rosewell, 133 Ill. App.3d 153 (1st Dist. 1985)); and (3) such party must clearly and convincingly prove that the property in question falls within the appropriate statutory exemption (*Id.*).

Furthermore, the word "exclusively" when used in Section 200/15-65 and other property tax exemption statutes means the "the primary purpose for which property is used and not any secondary or incidental purpose." Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993). More importantly, applicant's actual use, as opposed to its intended use, determines whether the property in question is used for an exempt

purpose. Skil Corp. v. Korzen, 32 Ill.2d 249 (1965); Comprehensive Training and Dev. Corp. v. County of Jackson, 261 Ill. App.3d 37 (5th Dist. 1994).

The present record establishes that the portion in dispute was being developed for eventual use as a day care center throughout 1995. In a somewhat analogous case, Weslin Properties v. Department of Revenue, 157 Ill. App.3d 580 (2nd Dist. 1987), the court held that a part of appellant's health care facility could be exempted from real estate taxes even though it was under construction during the year in question.

Unlike the present case, the appellant in Weslin Properties provided evidence that the adaptation and development in question was proceeding according to a specifically identifiable time table for accomplishing actual, exempt use. This applicant's failure to obtain appropriate licensure made it legally impossible for it to identify such a time frame due to the operation of Section 3(a) of the Child Care Act of 1969, 225 **ILCS** 10/1 *et seq.* That provision states, in relevant part, as follows:

No person, group or persons or corporation may operate or conduct any facility for child care ... without a license or permit issued by the [Illinois] Department [of Children and Family Services] or without being approved by the Department [of Children and Family Services] as meeting the standards established for such licensing ...[.]

225 **ILCS** 10/3.

Applicant encountered, and was unable to remove, this significant impediment to actual, exempt use throughout the 1995 assessment year. More importantly, it has not removed this same obstacle throughout an extended period of time that continues to the present date. Consequently, I conclude that applicant's attempt to exempt the portion in dispute rests on the speculative supposition that it will actually open and operate a day care center at some unidentified point in the future.

Such speculation was not present in Weslin Properties, *supra*, for if it was, the court could not have concluded that the property at issue therein was being adopted and developed for



a specifically identifiable exempt use, according to a specifically identifiable time table, during the tax year in question. In contrast, this applicant's inability to obtain appropriate licensure establishes that it merely *intended* to operate a day care center during 1995. Such intended use is legally insufficient to establish the required actual, exempt use.<sup>5</sup> Therefore, that part of the Department's determination which found that the portion in dispute was not in exempt use during 1995 should be affirmed.

Neither applicant's exemption from federal income tax nor its exemption from Use and related sales taxes alters the preceding conclusion. Such exemptions do not establish that the portion in dispute was used for exempt purposes during 1995. People ex rel County Collector v. Hopedale Medical Foundation, 46 Ill.2d 450 (1970).

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5. See, discussion of rules of statutory construction and interpretation, *supra*, at pp. 7-8.

WHEREFORE, for all the above-stated reasons, it is my recommendation that the portion in dispute, consisting of 2,391 square feet of real estate identified by Cook County Parcel Index Number 11-30-213-034, not be exempt from 1995 real estate taxes.

September 1, 1998

Date

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Alan I. Marcus  
Administrative Law Judge